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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Gividen et al.

Serial No.: 10/664,383

Filed: September 17, 2003

For: Container

Group: 1761

Examiner: Reginald Alexander

Englewood Cliffs, New Jersey 07632

December 12, 2005

BRIEF FOR APPELLANTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 2233-1450

Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellant.

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Respectfully submitted,

EAS

Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925



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Edward A. Squillante, Jr.
Reg. No. 38,319
Attorney for Applicant(s)

December 12, 2005
Date of Signature

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TABLE OF CONTENTS

I.	Real Party In Interest.....	4
II.	Related Appeals and Interferences	4
III.	Status of Claims	4
IV.	Status of Amendments	5
V.	Summary of the Claimed Subject Matter.....	5-6
VI.	Grounds of the Rejection to be Reviewed on Appeal	6-7

VII. Argument	8-11
VIII. Conclusion	12
IX. Claims Appendix	13-14
X. Evidence Appendix	15
XI. Related Proceedings Appendix	16

I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal, as depicted on the assignment, is Unilever Bestfoods, North America, a corporation of the State of New York.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1, 4, 5, 10, 13 and 14, the pending claims in the application. Claims 2, 3, 6-9, 11-12 and 15-18 have been cancelled. A copy of the appealed claims is attached to this Brief as an Appendix.

IV. STATUS OF AMENDMENTS

An Amendment after the Final Rejection was filed on October 6, 2005. The Amendment was entered by the Examiner for purposes of this Appeal.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention set forth in the claims on appeal is directed to a lid and a container, both of which can be used for serving liquid infused beverages. Independent claim 1 describes a container with a receptacle for holding liquid and a lid capable of gripping the string of an infusion bag. Support for independent claim 1 may be found, among other places, on page 2 of the specification, lines 10-17.

The second and only additional independent claim is claim 10. The same is directed to a lid for a container whereby the lid has an opening that is capable of gripping the string of an infusion bag. Support for independent claim 10 may be found, among other places, on page 2 of the specification, lines 19-25.

Figures 1, 2 and 6 illustrate the lid of claim 10, and figures 3, 4 and 5 illustrate the container of claim 1.

No dependent claims are argued separately, thus, the dependent claims are considered herewith as being read in conjunction with the independent claims they depend from.

Moreover, in the Specification, the portion from pages 1 and 2 (up to line 8) is background. The phraseology used in claims 1 and 10 may be found, for example, on page 2 of the specification as originally filed.

VI. GROUNDS OF THE REJECTION TO BE REVIEWED ON APPEAL

The issue raised in this appeal is primarily one of fact and of the type normally encountered in connection with a rejection made under 35 USC § 103. In particular, the issue is as follows:

Would one of ordinary skill in the art, upon reading Portman et al. (U.S. Patent No. 6,464,099) find it obvious to prepare a container with a receptacle and lid, and a lid as claimed in this invention?

Particularly, would one of ordinary skill in the art find it obvious (under 35 USC §103 and in view of Portman et al.) to prepare a container with a receptacle and a lid, as depicted in claim 1, whereby the lid has, for example, a first slit with further slits that extend at right angles therefrom and that are aligned with a second portion; and:

Would one of ordinary skill in the art find it obvious (under 35 USC §103 and in view of Portman et al.) to prepare a lid, as depicted in claim 10, with, for example, a first slit with further slits that extend at right angles therefrom and that are aligned with a second portion?

VII. ARGUMENT

I. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 4, 5, 10, 13 and 14 under 35 USC §103 as being unpatentable over Portman et al., U.S. Patent No. 6,464,099 (hereinafter '099). In the rejection, the Examiner mentions, in summary, that the '099 reference describes a container for serving infused liquid beverages made from infusion bags having a string and a tag attached. The Examiner further mentions that the container comprises a receptacle 11 for holding liquid, a lid 21 for the receptacle that is provided with an opening having a first portion 47 which is capable of gripping the string of the infusion bag and a second portion 61 located on the first portion to which the string of the infusion bag can move. Still further, the Examiner mentions that the container described in the '099 reference has an outlet 99 in the lid and the first portion comprises a plurality of slits which are aligned with the aperture and extend at angles therefrom. The Examiner believes that the '099 reference describes the claimed invention except that the slits in the product shown in the '099 reference do not extend at right angles. Nevertheless, the Examiner believes that it would be a matter of design choice to extend the angles at right angles as opposed to the angles shown in the '099 reference. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1 is directed to a container for serving infused liquid beverages made from infusion bags having a string and tag attached, the container comprising a receptacle for holding liquid, a lid for the receptacle provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a slit with further slits that extend at right angles therefrom and that are aligned with the second portion.

The container of claim 1 is further defined by the dependent claims, which claim, among other things, that the second portion is an aperture that is circular and has a diameter greater than that of the string of the infusion bag, that the length of the first slit is sufficient such that the tag attached to the string may be pushed through it without bending the tag.

Independent claim 10 is directed to a lid for a container for serving infused liquid beverages from infusion bags having a string and a tag attached, the lid being provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which

the consumer drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion.

The invention of claim 10 is further defined by the dependent claims which claim, among other things, that the second portion can be circular and have a diameter that is greater than that of the string of the infusion bag and that the length of the first slit is sufficient such that the tag attached to the string may be pushed through it without bending the tag.

In contrast, the '099 reference, as correctly noted by the Examiner, depicts a lid having slits that do not extend at right angles. Therefore, the slits in the '099 reference create obtuse and acute angles. The slits of the current invention create equal right or 90° angles. Therefore, depending on the orientation of the tea bag within the container, the '099 reference describes a container with a lid that requires a different pull or different tension when the consumer is attempting to catch the tea bag within the lid. The deficiencies of the container shown in the '099 reference are cured by the present invention since the slits which create right angles enable for a consistent tension or consistent pull in order for the tea bag to be captured within the lid, regardless of the orientation of the tea bag under the lid. This is true because the amount of plastic that has to be displaced is equal due to the formation of the right angles. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the reference relied on by the Examiner. Moreover, the deficiencies of the '099 reference are cured by the non-obvious slit orientation set forth in the presently claimed invention. For the reasons

above, Appellants respectfully request that the obviousness rejection be withdrawn and rendered moot.

VIII. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1, 4, 5, 10, 13 and 14 under 35 U.S.C. §103.

Respectfully submitted,



Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925

IX. CLAIMS APPENDIX

1. A container for serving infused liquid beverages made from infusion bags having a string and tag attached, said container comprising a receptacle for holding liquid, a lid for the receptacle provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion.
4. A container as claimed in claim 1 wherein the second portion is an aperture that is circular and has a diameter greater than that of the string on the infusion bag.
5. A container as claimed in claim 1 wherein the length of the first slit is sufficient that the tag attached to the string may be pushed through it without bending the tag.
10. A lid for a container for serving infused liquid beverages made from infusion bags having a string and tag attached, said lid being provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion.

13. A lid as claimed in claim 10 wherein the second portion is an aperture that is circular and has a diameter greater than that of the string on the infusion bag.

14. A lid as claimed in claim 10 wherein the length of the first slit is sufficient that the tag attached to the string may be pushed through it without bending the tag.

X. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131 and/or 1.132 are/is submitted herewith.

XI. RELATED PROCEEDINGS APPENDIX

No decisions rendered by a Court or the Board have been made; therefore, no such decisions are submitted herewith.